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In the Supreme Court of the United States
OCTOBER TERM, 1982

CHRIS GREENFIELD, Petitioner

v.

STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

JERROLD M. LADAR
507 Polk Street
Suite 310
San Francisco, CA 94102
(415) 928-2333
Attorney for Petitioner

QUESTION PRESENTED

Whether evidence must be suppressed when seized pursuant to the execution of a search warrant which is in all respects properly issued except that the magistrate issuing it fails to sign the search warrant.

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The petitioner CHRIS GREENFIELD, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of California, First Appellate District, filed May 17, 1982.

OPINION BELOW

The opinion of the District Court of Appeal for the State of California is included in the Appendix to the petition.

JURISDICTION

The District Court of Appeal opinion was

filed on May 17, 1982. Hearing was sought in the California Supreme Court and was denied on July 14, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

QUESTION PRESENTED

Whether evidence must be suppressed when seized pursuant to the execution of a search warrant which is in all respects properly issued except that the magistrate issuing it fails to sign the search warrant.

CONSTITUTIONAL PROVISION INVOLVED

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Judgments of conviction were entered upon pleas of guilty of the Superior Court in and for the County of San Francisco, California to one count of violating Penal Code section 12021 (possession by Felon of a firearm) and one count of violating Health and Safety Code section 11350 (possession of cocaine), counts two and three, respectively, of a five count information. Greenfield was sentenced to serve four years in state prison.

Greenfield is presently at liberty on bail pending appeal.

Prior to the entry of the pleas of guilty, Greenfield moved, pursuant to California Penal Code section 1538.5, to traverse a search warrant and to suppress the evidence derived from the execution of that search warrant. The motion was denied. The only issue raised herein is that search and seizure issue and it arises from the failure of the magistrate to sign the search warrant after having read and approved of it.

The proposed search warrant and supporting affidavit were presented to a Municipal Court Judge. The Judge read the affidavit and the proposed search warrant,

approved of it and decided to issue it and believed he did issue it. However, neither he nor anyone else ever signed the purported search warrant. The purported search warrant remains to this day unsigned.

The purported search warrant was executed on October 17, 1979. No one was in the house when the agents were there. The search yielded the weapon and cocaine upon which were based counts two and three of the information which are at issue in this appeal.

REASONS FOR GRANTING THE WRIT

The Penal Code expressly requires that a search warrant be signed by the issuing magistrate. A search warrant is by definition a signed order:

> "Search warrant defined. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate."
>
> Penal Code section 1523 (emphasis added).

The statutory procedure for the issuance of search warrants makes it mandatory that the magistrate sign the search warrant

upon a finding of probable cause:

> "If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant signed by him, with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property or things in his custody subject to order of the court as provided by Section 1536."
>
> Penal Code section 1528(a) (emphasis added).

Bowyer vs. Superior Court, 37 Cal.App. 3d 15 (1974), involving a telephonic search warrant [P.C. sec. 1526(b), 1528(b)], held that failure to sign the magistrate's name to the copy of the authorized search warrant invalidated the search. The day after the search, the magistrate signed the warrant, which he "dated nunc pro tunc as of April 22 ..."

The court held that the search was illegal and that the evidence must be suppressed:

> "Section 1523 defines a search warrant as "an order in writing, ... signed by a magistrate, directed to a peace officer,

> commanding ... The same requirement is imported by other sections which specify a form for the warrant which is to be signed (Section 1529) ... both sections thus indicate that the officer is authorized to act pursuant to the warrant only after it exists in writing (sec. 1523, 1528) and (1) it has been 'signed' by the magistrate."
>
> Bowyer v. Superior Court 37 Cal.App. 3d 15 (1974)

People vs. Superior Court (Robinson), 75 Cal.App.3d 76 (1977), relied upon below by the Court of Appeal, should not be controlling. In Robinson, it was reasoned that evidence seized during the execution of an unsigned warrant need not be suppressed, even though the warrant was invalid, because to do so would not serve to deter illegal police conduct. In this regard, Robinson clearly is wrong. Failure to suppress in these situations would do nothing except to encourage police and judicial conduct which is illegal, or, at least, reckless. If unsigned warrants are permitted to elude the exclusionary rule, then the police and the judiciary will have a diminished incentive to see to it that proper signatures are obtained and a

search warrant would never be necessary so long as the magistrate would testify at the suppression hearing that he orally had authorized the search after concluding that probable cause existed. The sorting out, on appeal, of which unsigned warrants were innocently obtained and which were not is a process which is inadequate to obviate the likelihood that we would witness a rise in the number of unsigned warrants some which (perhaps many of which) ought not to be condoned. This is precisely the point of Penal Code section 1538 which eliminates these dangerous possibilities by requiring the magistrate to actually sign the warrant. Furthermore, the major purpose of a warrant is to provide the property owner with sufficient information to reassure him of the legality of entry. Michigan v. Tyler 436 U.S. 499 (1978) An unsigned "warrant" would do nothing more than to raise the property owner's suspicions of the possible illegality of the entry.

CONCLUSION

The writ should issue.

Respectfully submitted,

JERROLD M. LADAR

JERROLD M. LADAR
Counsel for Petitioner

September 13, 1982